

Message Text

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PAGE 01 STATE 082543
ORIGIN L-03

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FM SECSTATE WASHDC
TO AMEMBASSY JIDDA
INFO USLO RIYADH
AMCONSUL DHAHRAN

UNCLAS STATE 082543

E.O. 11652: N/A

TAGS: BGEN, PINT, SA

SUBJECT: AGENTS FEES

REF: JIDDA 1248 AND PREVIOUS

1. ATTORNEYS FOR SEVERAL U.S. FIRMS HAVE INDICATED THAT SAUDI AGENTS ARE MAKING A VARIETY OF CLAIMS ABOUT THE NARROW SCOPE OF THE RECENT DECREE LIMITING AGENTS FEES. THESE FIRMS ARE RELUCTANT TO PUT THESE QUESTIONS DIRECTLY TO SAUDI AUTHORITIES. ANY LIGHT EMBASSY COULD HAVE SAUDI AUTHORITIES SHED ON FOLLOWING ISSUES WOULD BE VERY HELPFUL.

2. (A) DOES ARTICLE 1, WHICH APPLIES TO CONTRACTORS DEALING WITH THE GOVERNMENT, PERMIT HIGHER FEES TO BE PAID TO
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PAGE 02 STATE 082543

SUBCONTRACTOR'S AGENT, WHO DEALS WITH PRIME CONTRACTOR AND NOT GOVERNMENT?

(B) DOES THE PROHIBITION ON AGENTS FEES IN ARMAMENTS SALES APPLY ONLY TO THE SALE OF LETHAL WEAPONRY ITSELF, MORE BROADLY TO ANY ITEMS DESIGNED FOR SPECIAL MILITARY END USE OR EVEN MORE BROADLY TO ANY SALES TO MINISTRY OF DEFENSE

AND NATIONAL GUARD? (FIRMS RECOGNIZE THAT THIS QUESTION IS CARRY-OVER FROM OLDER DECREE.)

(C) DOES ARTICLE 8 PERMIT MORE THAN ONE AGENT ON A CONTRACT PROVIDED THAT TOTAL FEES ARE KEPT BELOW 5 OR IS IT TO BE READ LITERALLY AS REQUIRING THAT ONLY ONE AGENT BE USED?

(D) WHAT IS MEANT BY THE DISTINCTION IN ARTICLE 9 BETWEEN CONSULTANT AGENT AND EXECUTIVE AGENT? DOES THIS DRAW A PRE-AWARD AND POST-AWARD DISTINCTION OR DOES IT, AS SOME SAUDIS ASSERT, PERMIT A COMPANY WHICH HAS WON A CONTRACT TO HAVE BOTH A CONSULTING AND AN IMPLEMENTING AGENCY IN THE POST-AWARD PHRASE?

(E) DOES THE DECREE PROHIBIT PAYMENT OF ALREADY CONTRACTED FEES ABOVE 5 , OR, AS WE BELIEVE LIKELY, DOES IT AFFECT ONLY CONTRACTS ENTERED INTO SINCE DATE OF DECREE. (RETROACTIVITY MIGHT RESULT IN WINDFALL PROFIT TO CONTRACTOR UNLESS REBATE TO CUSTOMER WERE MADE.)

3. WE RECOGNIZE THAT EMBASSY HAS ALREADY REPORTED SOME CONVERSATIONS ON ASPECTS OF THIS PROBLEM, AND THAT SAUDI OFFICIALS THEMSELVES MAY NOT HAVE ALL THE ANSWERS. COOPER

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